IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5055 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

@

GSRTC

Versus

RATILAL BABARBHAI PATEL

Appearance:

1. Special Civil Application No. 5055 of 1999

MRS VASAVDATTA BHATT for Petitioner No. 1

MR BG JANI for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 01/05/2002

ORAL JUDGEMENT

Heard learned advocate Ms. Bhatt for the petitioner and Mr. Jani for the respondent. In this petition, the petitioner is challenging the award made by the labour court, Surat in Reference No. 848 of 1997

dated 11th October, 1998 wherein the labour court has granted reinstatement with continuity of service without back wages for the intervening period with punishment of stoppage of two annual increments with future effect.

2. Rule was issued by this court staying operation of the impugned award subject to provisions of section 17 B of the Industrial Disputes Act, 1947 by order dated 15th December, 1999.

3. Learned advocate Ms. Bhatt for the petitioner has submitted that the labour court has committed gross error in passing the award in question. She has submitted that the respondent has committed serious misconduct of recovering fare from the passengers but not issued the tickets. Past record of the respondent which is bad was produced before the labour court wherein in all 19 misconducts were earlier committed by the respondent in past and, therefore, in view of the seriousness of the misconduct and also in view of the past defaults, the labour court ought not to have interfered with the order of punishment passed by the competent authority. She has submitted that looking to the past record, once, the respondent was dismissed from service and by way of giving him an opportunity, he was ordered to be reinstated by the corporation and, therefore, according to her, the labour court was not justified in exercising the discretion in favour of the workman in exercise of the powers under section 11-A of the Industrial Disputes Act, 1947. She has further submitted that initially competent authority has imposed punishment of stoppage of five annual increments with cumulative effect and by way of review, order of dismissal dated 1st August, 1997 was passed and therefore, once when the labour court has exercised the powers and has granted reinstatement, then, it ought to have restored the original order of punishment passed by the competent authority. Thus, according to her, the labour court has committed error in ignoring this aspect and, therefore, this court should interfere with the findings recorded by the labour court.

On the other hand, learned advocate Mr.Jani appearing for the respondent workman has submitted that while the respondent was on duty on 11th October, 1995, in a bus from Poona to Surat Route, his bus was checked and certain passengers were found without tickets. There were in all 65 passengers in the bus and the work of issuance of tickets was going on in the bus. At that time, bus was stopped by the checking party near Kikoti and though the booking was going on, checking staff had checked the bus and it was alleged that from two

passengers of one group from Nasik to Dindoli and from one passenger going from nasik to Vani, an amount of Rs. 16.00 and 13.00 respectively was recovered but tickets were not issued. For the misconduct committed by the workman, charge sheet was issued to the workman dated 18.12.1995 and ultimately, punishment of stoppage of five annual increments with permanent effect was imposed and since the said punishment was found not enough by the competent authority and therefore, said punishment was set aside and notice for review was issued to the workman on 26.9.96 and subsequently, order of dismissal was passed against the workman and in reference proceedings before the labour court, the labour court has considered entire facts and circumstances of the case and the documents on record and ultimately, it was found that the punishment of dismissal in such circumstances was much harsh, excessive and unjustified and, therefore, considering the past record, the labour court has interfered with the punishment and has passed balanced order and has not committed any error and, therefore, this Court should not interfere with such order.

I have perused the award in question. I have also considered the submissions made by the learned advocates for the parties. It is not in dispute that while the respondent was on duty on 11th October, 1995, in a bus from Poona to Surat Route, his bus was checked and certain passengers were found without tickets. It is also not in dispute that there were in all 65 passengers in the bus and the work of issuance of tickets was going on in the bus and at that time, bus was stopped by the checking party near Kikoti and though the booking was going on, checking staff had checked the bus and it was alleged that from two passengers of one group from Nasik to Dindoli and from one passenger going from nasik to Vani, an amount of Rs. 16.00 and 13.00 respectively was recovered but tickets were not issued. For the misconduct committed by the workman, charge sheet was issued to the workman dated 18.12.1995 and ultimately, punishment of stoppage of five annual increments with permanent effect was imposed and since the said punishment was found not enough by the competent authority and therefore, said punishment was set aside and notice for review was issued to the workman on 26.9.96 and subsequently, order of dismissal was passed against the respondent workman. The corporation has produced order passed by the reviewing authority wherein the reviewing authority has enhanced the punishment without assigning any reasons for coming to such conclusion of enhancement of the punishment. The question is that while deciding the appeal, whether the

appellate authority is empowered to enhance the punishment imposed by the competent authority or not. The reviewing authority has considered the additional material by way of personal hearing of the respondent in review proceedings. Power of review is not like the appellate power of the appellate authority but the revisional powers are required to be exercised by the reviewing authority to consider whether there is any defect in the order passed by the competent authority. Under clause 9 of the ST Procedure, specific provisions have not been made to give power to the appellate authority to enhance the punishment. However, without considering this aspect, the labour court thought it fit that looking to the past record, it would be just and proper to make award of reinstatement and to deny back wages and further to impose punishment of stoppage of two increments. However, the labour court ought to have kept in view that the moment the order of the review authority dismissing the workman is set aside, original order of punishment would stand restored automatically and therefore, it ought not to have interfered with the same by imposing punishment of stoppage of two increments with future effect.

Therefore, considering all these aspects of the matter, according to my opinion, the labour court has committed error in imposing punishment of stoppage of two increments with future effect while passing the award in question. While interfering with the order passed by the appellate authority and while granting reinstatement in favour of the respondent workman, it ought to have restored the original order of punishment passed by the competent authority. To that extent, the award in question is required to be interfered by this Court.

For the reasons recorded hereinabove, this petition is partly allowed. The award made by the labour court in Reference No. 848 of 1997 dated 11th October, 1998 is modified to the effect that instead of the punishment of stoppage of two annual increments with future effect as ordered by the labour court under the award in question, the punishment of stoppage of five annual increments with future effect as ordered by the competent authority shall stand restored. It is clarified that this court has not disturbed the rest of the award made by the labour court and has not disturbed the award of reinstatement of the respondent. Rule is made absolute in terms indicated hereinabove with no order as to costs.

Learned advocate Mr. Jani appearing for the

respondent workman has submitted that the award in question has been stayed by this Court subject to compliance of section 17-B of the Industrial Disputes Act by order dated 15th December, 1999 and, therefore, some suitable directions are required to be issued to the petitioner so that the award in question is implemented and the respondent is reinstated in service within some reasonable period. I have considered the submissions made by Mr. Jani. It is directed to the petitioner corporation to reinstate the respondent workman in service with effect from 11th October, 1998, within one month from the date of receipt of copy of this order and to pay full wages to the respondent with effect from 11th October, 1998 till the date of his actual reinstatement within two months from the date of receipt of copy of this order.

1.5.2002. (H.K. Rathod,J.)
Vyas